

² The Board notes that, following the April 23, 2021 decision, appellant submitted additional evidence on appeal. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On February 27, 2021 appellant, then a 63-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 11, 2020 she contracted COVID-19 after handling and delivering mail while in the performance of duty. She stopped work on December 11, 2020 and returned to work on March 1, 2021. On the reverse side of the claim form A.H., appellant's supervisor, controverted continuation of pay because appellant had not filed the Form CA-1 within 30 days of the alleged injury.

In a development letter dated March 8, 2021, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and details regarding appellant's alleged COVID-19 exposure. It afforded both parties 30 days to submit the necessary evidence.

In a letter dated March 16, 2021, OWCP informed appellant of the passage of the American Rescue Plan Act of 2021 (ARPA), and explained that her claim would be reviewed under this new legislation. It further explained that this legislation created a presumption that a federal employee diagnosed with COVID-19 after performing duties that required contact with coworkers or the public has an injury proximately caused by employment.

On March 19, 2021 an employing establishment human resources specialist, B.M., responded to OWCP's development questionnaire. In an e-mail of even date, A.H. indicated that she had no knowledge of appellant being directly exposed to COVID-19 in the performance of duty and that she did not know what task appellant was performing during the alleged exposure. She reported that appellant's shifts consisted of direct contact with coworkers for approximately two hours per day and intermittent contact with the public for approximately five to six hours per day. A.H. noted that appellant encountered around 50 people daily, but noted that such contact was only "in passing when walking throughout the building." Finally, she stated that appellant was required to wear a mask and was provided gloves and hand sanitizer.

OWCP subsequently received a laboratory test result, dated December 13, 2020, which established that appellant tested positive for COVID-19.

Hospital discharge notes, dated January 7, 2021, showed that appellant was diagnosed with COVID-19, pneumonia, and atrial fibrillation with rapid ventricular response.

In a letter dated April 6, 2021, Dr. Felix Morris, a Board-certified internist, specializing in pulmonology and critical care medicine, noted that appellant had been hospitalized January 2 through 7, 2021 for pneumonia due to COVID-19 and a massive pulmonary thromboembolism that was treated with lytic therapy. He reported that in follow-up appointments on February 4 and 22, 2021 appellant had a large persistent infiltrate in her right upper lung and persistent dyspnea related to COVID-19. Dr. Morris recommended that appellant stay off work until March 1, 2021.

By decision dated April 23, 2021, OWCP accepted appellant's claim for COVID-19. By separate decision of even date, it denied appellant's claim for COP, finding that she had not

reported her injury on an OWCP-approved form within 30 days of the accepted December 11, 2020 employment injury. OWCP noted that the denial of COP did not preclude her from filing a claim for disability due to the effects of the accepted employment injury.

LEGAL PRECEDENT

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement to COP for the period December 11, 2020 through March 1, 2021.

Appellant filed written notice of her traumatic injury (Form CA-1) on February 27, 2021. By decision dated April 23, 2021, OWCP denied appellant's request for COP, as her claim was not filed within 30 days of the accepted December 11, 2020 employment injury. It noted that the denial of COP did not preclude her from filing a claim for disability due to the effects of the accepted employment injury.

Because appellant filed written notice of her traumatic injury claim (Form CA-1) on February 27, 2021, the Board finds that it was not filed within 30 days of the accepted December 11, 2020 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. Accordingly, appellant is not entitled to COP.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

³ *Supra* note 1 at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁶ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to COP for the period December 11, 2020 through March 1, 2021.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board